



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-D-S-D-

DATE: NOV. 20, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a K-12 public school, seeks to employ the Beneficiary as a high school teacher. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition finding that the Petitioner did not establish that the Beneficiary has the requisite educational degree in the required field of study to meet the terms of the labor certification.

On appeal the Petitioner submits a brief and copies of previously submitted documentation. The Petitioner asserts that the Beneficiary has the requisite educational degree in the requisite field of study to meet the requirements of the labor certification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A petition for an advanced degree professional must be accompanied by documentation showing that the beneficiary is a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(1). The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate.” It also provides that “[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” *Id.* In addition to meeting the regulatory requirements for the requested classification, a beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition’s priority date.¹ See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977). The issue on appeal is whether the Beneficiary has the requisite educational degree to meet the requirements of the labor certification.

Section H of the labor certification states the following with regard to the job requirements for the proffered position of high school teacher:

4.	Education: Minimum level required:	Master’s degree
4-B.	Major Field of Study:	Education
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	36 months
7.	Is an alternate field of study acceptable?	Yes
7-A.	What field?	Related field
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	36 months
10-B.	Acceptable alternate job title(s)	Teaching in Secondary Education Classrooms

In box H.14 (Specific skills or other requirements) the educational and experience requirements described above are reiterated in the following language:

Master’s Degree in Education or related and 3 years experience teaching in Secondary Education classrooms on multiple subject matter (Multiple Openings).

Thus, the labor certification specifies that a master’s degree in education or a related field of study, or a foreign educational equivalent, plus 36 months of qualifying experience, is required for the

¹ The “priority date” of a petition is the date the underlying labor certification is filed with the DOL. See 8 C.F.R. § 204.5(d). In this case the priority date is July 21, 2017.

proffered position of high school teacher. No alternate combination of education and experience is acceptable. Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a master's degree in mathematics from [REDACTED] in [REDACTED] India, completed in 1994.

As evidence of the Beneficiary's educational degrees the Petitioner has submitted copies of two sets of degree certificates and associated marks statements from [REDACTED] in [REDACTED] India, and an additional degree certificate and associated certificate of marks from [REDACTED] affiliated with the [REDACTED] in [REDACTED] India. This documentation shows that the Beneficiary earned a bachelor of science (B.Sc.) at [REDACTED] following a three-year academic program in the years 1987-1990, a bachelor of education (B.Ed.) at the same institution following a one-year academic program in the years 1990-1991, and a master of science (M.Sc.) in the field of mathematics at the [REDACTED] following a two-year academic program in the years 1992-1994. With its initial evidence the Petitioner submitted an evaluation of the Beneficiary's educational credentials from [REDACTED] and in response to the Director's request for evidence submitted two additional evaluations from [REDACTED] and [REDACTED]. All three evaluations asserted that the Beneficiary's one-year B.Ed. following his three-year B.Sc. at [REDACTED] was equivalent to a U.S. bachelor's degree and that the Beneficiary's subsequent M.Sc. in mathematics from the [REDACTED] was equivalent to a U.S. master's degree in mathematics.

In his decision the Director found that none of the Beneficiary's degrees from [REDACTED] or the [REDACTED] was equivalent to a U.S. master's degree and that the Beneficiary's highest degree, the M.Sc. from the [REDACTED] was not in education or a related field as required by the labor certification. The Director referred to the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),² which describes a two-year master of science (M.Sc.) degree following a three-year bachelor's degree in India as comparable to a bachelor's degree in the United States. Even if the Beneficiary had more than three years of undergraduate education, the Director stated, that fact would not elevate the U.S. equivalency of his M.Sc. degree above the baccalaureate level because, as indicated in EDGE, entry into the M.Sc. program in India only requires a three-year bachelor's degree. The Director also concluded that while the Beneficiary may have a baccalaureate level degree in the field of education, his M.Sc. in mathematics is not in a related field and thus would not meet the field of study requirement of the labor certification even if the M.Sc. were equivalent to a U.S. master's degree.

² AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are> (last visited Oct. 26, 2018). EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (last visited Oct. 26, 2018).

On appeal the Petitioner claims that the U.S. equivalency of a foreign degree depends on the total years of postsecondary study that culminate in the final degree. For the Beneficiary that amounted to six years of study culminating in his M.Sc. degree. Since a U.S. master's degree program typically requires six years to complete, including four years of undergraduate and two years of graduate study, the Petitioner asserts that the Beneficiary's four years of study at [REDACTED] followed by two years of study at the [REDACTED] means that his M.Sc. from the latter institution should be considered equivalent to a U.S. master's degree. In support of this claim the Petitioner discusses the three evaluations previously submitted from [REDACTED] and [REDACTED] all of which assert that the Beneficiary's four years of study and second degree at [REDACTED] (the B.Ed.) was equivalent to a U.S. bachelor's degree and that the Beneficiary's subsequent two years of study and M.Sc. degree at the [REDACTED] was equivalent to a U.S. master's degree.

All three evaluations, however, are substantively deficient in regard to their conclusions that the Beneficiary has the equivalent of a U.S. master's degree. They do not contain any detailed analysis of the Beneficiary's coursework at [REDACTED] and the [REDACTED] and provide no analytical basis for their assertions as to the U.S. equivalencies of the respective degrees. None of the evaluations indicates how many credit hours were earned in the three degrees, and only one of the evaluations (from [REDACTED] assigns U.S. credit equivalencies to the Beneficiary's individual courses, though even these figures are unsubstantiated since [REDACTED] does not explain their source. Moreover, none of the evaluations addresses the fact that the entry requirement for a two-year M.Sc. degree program in India is only a three-year bachelor's degree,³ not four years of university-level study as generally required for a bachelor's degree in the United States. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). Evaluations of educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. We may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are "in any way questionable." *Matter of Caron Int'l. Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

As the Director pointed out, contrary to the evaluations' conclusions, EDGE finds the Beneficiary's two-year master's degree following a three-year bachelor's degree to be comparable to a U.S. bachelor's degree. Courts have supported our utilization of EDGE as a resource for determining the U.S. equivalency of foreign degrees. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. In *Tisco Group, Inc. v.*

³ See edge.aacrao.org/country/credential/master-of-arts-or-commerce?cid=single (last visited Oct. 30, 2018). By comparison, some specialized master of science degrees in India – such as the Master of Science (MS) Research, the Master of Science (MS), the Master of Science (MSc) in Agriculture, the Master of Science (MSc Medical), and the Master of Science (MSc Microbiology) – are rated by EDGE as comparable to U.S. master's degrees.

Napolitano, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In accord with the above rulings, we agree with EDGE's assessment that the Beneficiary's master's degree is comparable to a U.S. bachelor's degree, not a U.S. master's degree.

Notwithstanding their substantive deficiencies regarding the master's degree equivalency, [REDACTED] and [REDACTED] all evaluate the Beneficiary's one-year B.Ed. following his three-year B.Sc. as equivalent to a U.S. bachelor's degree. These evaluations accord with the credential advice of EDGE, which states that a one-year bachelor of education following a three-year bachelor's degree in India is comparable to a bachelor's degree from an accredited college or university in the United States. See edge.aacrao.org/country/credential/bachelor-of-education-bed?cid=single (last visited Oct. 30, 2018). This degree equivalency is not helpful to the Beneficiary, however, because neither a bachelor's degree in education nor four years of university study of any sort is required for entry into a two-year M.Sc. degree program in India. The Beneficiary's B.Ed. degree, therefore, does not elevate the U.S. equivalency of the M.Sc. that followed it.

The Petitioner also asserts that the Beneficiary's Class AA license from the State of Mississippi to teach middle and high school mathematics and AP calculus is further evidence of the master's level equivalency of his M.Sc. from the [REDACTED] because the Mississippi Department of Education's guidelines for educator licensure, a copy of which is in the record, state that the requirement for a Class AA license is a "[m]aster's degree in the endorsement area in which the license is requested." According to the Petitioner, therefore, Mississippi's Department of Education has determined that the Beneficiary's M.Sc. in mathematics from the [REDACTED] is equivalent to a U.S. master's degree in mathematics. The academic requirements of a state government for the licensure of teachers, however, are not dispositive for USCIS in determining the U.S. equivalency of a foreign degree. USCIS is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions of the federal court of appeals from whatever circuit that the action arose. See *N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the Administrative Procedures Act, even when they are published in private publications or widely circulated). Therefore, the academic requirements of the State of Mississippi for a license to teach middle and high school mathematics and AP calculus do not govern the determination by USCIS, in the context of this immigrant visa petition, as to whether the Beneficiary's M.Sc. in mathematics from the [REDACTED] is equivalent to a U.S. master's degree in mathematics.

Finally, even if we found that the Beneficiary's M.Sc. from the [REDACTED] was equivalent to a U.S. master's degree, we do not accept the Petitioner's claim that it meets the field of study requirement of the labor certification. The Beneficiary's M.Sc. was in the field of mathematics,

whereas the labor certification requires a master's degree in education or a related field. The Petitioner identifies specific education-related courses taken by the Beneficiary, but they were all in his B.Ed. curriculum at [REDACTED] which resulted in a bachelor's level degree in the field of education, not a master's level degree. The Petitioner contends that the Beneficiary's M.Sc. in mathematics is related to the field of education because mathematics is one of the subject matters that the Beneficiary will teach. We are not persuaded. None of the coursework in the Beneficiary's M.Sc. degree program had an educational or teaching component, as far as the course titles indicate. Substantive courses in the field of mathematics, like those listed on the Beneficiary's M.Sc. transcript, are not discernably related to the types of courses the Beneficiary took in his B.Ed. program which focused on broad educational studies and methods of teaching. Accordingly, we find that the Beneficiary's M.Sc. in mathematics from the [REDACTED] even if it were deemed to be equivalent to a U.S. master's degree in mathematics, is not in a field related to education and therefore does not meet the field of study requirement of the labor certification.

For the reasons discussed above, the Petitioner has not overcome the Director's findings that the Beneficiary does have the required master's degree in a requisite field of study to meet the educational requirements of the labor certification.

III. CONCLUSION

The appeal will be dismissed because the record does not establish that the Beneficiary has the foreign educational equivalent of a U.S. master's degree in education or a related field of study, as required by the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of S-D-S-D-*, ID# 1947852 (AAO Nov. 20, 2018)